

1 Q. And who brought that up?

2 A. Tony did.

3 Q. And did you make a response to him concerning
4 that subject matter?

5 A. Yes.

6 Q. And what, if anything, did you say to him?

7 A. Told him I couldn't talk to him about any deals.
8 I could make no deals with him. He was furnishing me
9 some information and wanted to talk to me about a deal,
10 making some kind of a plea bargaining arrangement. I
11 told him I can't do it. I can't enter into anything
12 with you like that.

13 Q. Did you not see him until July 23rd then, is that
14 correct, almost about a month later?

15 A. Yes, sir.

16 Q. On the 23rd did he bring up the subject matter
17 about deals or assist you in any, in any fashion?

18 A. Yes, he did.

19 Q. On the 23rd what was his -- did he make any
20 proposals to you or anything of that nature?

21 A. He wanted to give me some information and somehow
22 use, let that information be used in some kind of a
23 plea-type deal he could make with the prosecutor or
24 actually make it with me. I told him, you know, I would
25 take any information he would have but I couldn't make

1 any deals with him. He would have to go through his
2 attorney or, or through the prosecutor.

3 Q. Did he give you information and, if so, what was
4 the subject matter of the information he gave you?

5 A. Yes, he did give me some information on this
6 criminal activity, some particular garage, some garage
7 burglaries, B & E's.

8 Q. And when you first met with him back at the, the
9 first time you met with him on, on June 28th or the
10 29th, did he, any of those two occasions, reiterate to
11 you what he had told earlier on the 22d?

12 A. Yes.

13 Q. Or the 23rd, really?

14 A. It was on the 23rd, but, yes, he did.

15 Q. Were the comments that he made to you on, let me
16 get my correct date again, on the 28th and/or the 29th
17 different than or consistent with what he told on the
18 22d or 23rd?

19 A. He was always consistent.

20 MR. SLAVENS: That's all I have.

21 The attorneys may ask you
22 some questions.

23 THE COURT: Cross-examination.
24
25

CROSS-EXAMINATION

BY MR. ARNTZ:

Q. Afternoon, Detective Lawson.

A. Good afternoon, Mr. Arntz.

Q. Detective Lawson, I think we have already heard that you are a homicide detective with the Dayton Police Department and have been for sometime, is that true?

A. That's true.

Q. And worked together with your brother on these two cases that we are here on today?

A. Yes, sir.

Q. And not the first time the two of you have worked together, is it?

A. No, sir.

Q. And I think this morning you were talking to the prosecutor about the occasion that you had to meet with our client, Weston Howe, on June 23rd, I believe it was early in the morning, is that correct?

A. Yes, sir.

Q. And you told us that you met with Mr. Howe in an interview room in the detective section of the Dayton Police Department, is that correct?

A. Yes, sir.

Q. And that would have been on or about 2:49 in the morning?

1 A. Yes, sir.

2 Q. And 2:49 in the morning when you met with
3 Mr. Weston Howe for the first time would have been after
4 a detective had had an interview with Walter Polson,
5 isn't that true?

6 A. Yes, sir.

7 Q. And 2:49 when you first met with Mr. Weston Howe
8 would have been before any detective had an interview
9 with Tony Elofskey?

10 A. Yes, sir.

11 Q. And when you met with Mr. Howe in order to talk
12 with him, you had Detective Tony Spells along there with
13 you, didn't you?

14 A. Yes, sir.

15 Q. And Detective Tony Spells, for the information of
16 the jury, is the black man we saw interviewing Walter
17 Polson on the videotape that we just watched?

18 A. Yes, sir.

19 Q. And yourself and Detective Spells are sitting
20 with Weston Howe in the interview room while you talk to
21 him?

22 A. Yes, sir.

23 Q. And the interview room is a very small room?

24 A. Yes, sir.

25 Q. And its dimensions are about 5 by 5 feet?

1 A. Roughly that, yes, sir.

2 Q. All right. And that would be maybe the width of
3 this area where the Court Reporter sits?

4 A. Near that. I think it's a little bit larger
5 than --

6 Q. Just a little wider than that and it would be as
7 long as from the end of this railing here down to where
8 the podium is?

9 A. Yes, it's about that size.

10 Q. All right. And that interview room, of course,
11 has walls on all four sides?

12 A. Yes.

13 Q. And no windows?

14 A. No, sir.

15 Q. And the three of you are seated in an area that
16 large or that small when you talk?

17 A. Yes.

18 Q. All right. And in addition to the three persons
19 inside that room, there is also furniture, is there not?

20 A. Yes, sir.

21 Q. There's a table and a number of chairs?

22 A. Yes.

23 Q. How many chairs were in the room?

24 A. There is three chairs.

25 Q. And yourself and Detective Spells and Weston Howe

1 were seated in those chairs at the table, aren't you?

2 A. Yes, sir.

3 Q. And in that 5 by 5 room, room, or so, I think
4 Detective Spells is sitting across the table from Howe
5 and you're sitting at the end of the table?

6 A. As I recall, that's correct.

7 Q. So on one of your shoulders, here is Detective
8 Spells and on your other shoulder, here is Weston Howe?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. And those are fairly close quarters to have a
13 conversation in for three people, isn't it?

14 A. It's a small room.

15 Q. Yeah.

16 And you have been here present throughout the
17 trial pretty much the last five or six days, haven't
18 you?

19 A. Yes, sir.

20 Q. You heard the testimony of the arresting officer
21 to the effect that Howe told him that he was
22 claustrophobic?

23 A. Yes, sir.

24 Q. And were you aware of that at the time you talked
25 to him in this small room with Detective Spells?

1 MR. SLAVENS: Objection to that, your
2 Honor.

3 THE COURT: Well, if he knows.
4 You can answer that yes or
5 no.

6 Overruled.

7 A. No, I wasn't aware of it.

8 BY MR. ARNTZ:

9 Q. And when you talked to him in that room, I take
10 it you closed the door to the room before you began
11 speaking to him?

12 A. I did.

13 Q. And in the room I think one of the first things
14 you did was cover that Miranda Rights Pre-Interview Form
15 with him?

16 A. Yes, we went through it with him, yes.

17 Q. And I think you said Detective Spells filled out
18 the top part of that and then either you or he reviewed
19 the information with Howe that is on that form?

20 A. I didn't say that.

21 Q. Who reviewed the information with Howe from the
22 Pre-Interview Form?

23 A. Detective Spells.

24 Q. Okay. And you were present when that happened?

25 A. Yes, sir.

1 Q. And you watched as Detective Spells reviewed the
2 form with Weston Howe?

3 A. Yes.

4 Q. And down at the bottom of that form is a section
5 entitled waiver of rights?

6 A. Yes, sir.

7 Q. And there is a signature of Lee Howe there, is
8 that correct?

9 A. Yes, sir.

10 Q. And you watched him sign that bottom of the form,
11 did you?

12 A. Yes, sir, I did.

13 Q. What hand did he sign it with?

14 A. I have no idea.

15 Q. Do you remember testifying under oath last year
16 you watched him sign it with his right hand?

17 A. I don't know he's right handed now. As far as I
18 know, he was using his right hand. I don't recall that
19 testimony.

20 Q. Do you recall being asked last year which hand he
21 signed the form with?

22 A. I don't recall.

23 Q. And after he signed the form, this is when
24 yourself and Detective Spells began to talk to him about
25 the Blazer investigation, is that right?

1 A. Yes, sir.

2 Q. Okay. And as I understand it, you talked to Howe
3 in two different intervals. That is, you talked to him
4 during one period then left the room and returned and
5 talked to him a second period?

6 A. That's correct.

7 Q. The second time you came back into the room
8 Detective Spells was not with you?

9 A. That's correct.

10 Q. All right. The first period of time when you
11 talked to him, did either you or Detective Spells have a
12 pen with you?

13 A. I had a pen and I was taking notes.

14 Q. You were taking notes at that time?

15 A. Yes.

16 Q. And Detective Spells, did he have either a pen or
17 pencil with him?

18 A. I'm sure he did.

19 Q. And was he taking notes, as you recall?

20 A. No.

21 Q. So Detective Spells had an extra pen or pencil
22 but he didn't use it to take notes?

23 MR. SLAVENS: Objection, your Honor.

24 That's asked and answered.

25 THE COURT: Overruled. You can answer.

1 A. There was only one set of notes taken. Detective
2 Spells always carries a pen in his pocket, but I don't
3 remember his pen coming into play. In this instance, I
4 took the only set of notes.

5 BY MR. ARNTZ:

6 Q. And I take it that you took the notes then when
7 you talked to Howe on the first period of time and also
8 the second session when Spells was not with you?

9 A. That's correct.

10 Q. And did yourself and Spells have access to a
11 blank piece of paper that day?

12 A. I had a tablet in front of me.

13 Q. You had a blank tablet to write on that day?

14 A. Yes.

15 Q. And does the Dayton Police Department also have
16 in its possession a tape recorder?

17 A. Yes, we do.

18 Q. A working tape recorder?

19 A. I'm sure, yes, sir.

20 Q. And probably a blank cassette also?

21 A. I would imagine so, yes, sir.

22 Q. All right. And as I understand it, when you were
23 first talking to Lee Howe, he was answering your
24 questions?

25 A. Yes.

1 Q. In fact, didn't argue with you, fight with you,
2 or anything like that?

3 A. Not at any time.

4 Q. And you were always speaking to him in the same
5 tone and calm voice that you are speaking right now?

6 A. Pretty much.

7 Q. Was there an occasion when you did not?

8 A. No.

9 Q. So pretty much means you always did speak in the
10 same tone of voice?

11 A. Right. There was, I raise my voice a time or two
12 just to get a point across but there was not a shouting
13 match. It, it was just a conversation.

14 Q. One of the points you did bring up later was when
15 you called him a liar, do you remember that?

16 A. Yes.

17 Q. And you called him a liar more than once, didn't
18 you?

19 A. Yes, I did.

20 Q. And on those numbers of times that you called him
21 a liar, did you ever raise your voice above the tone
22 that we are using today?

23 A. No.

24 Q. And I think you told us that you say Weston Howe
25 gave you more than one version of what had occurred at

1 the Blazer homicide?

2 A. Yes, he did.

3 Q. And what was it that caused him to change his
4 story from one story to the next if you spoke to him in
5 this low tone of voice that you're using today?

6 A. I had told Weston some information had been
7 obtained during the course of the investigation and
8 information was that the hand swabbing had been done on
9 his hands and this was prior to our interview. And I
10 told him that we had gotten the result on that AA. And
11 that was false. And I told him that the AA test was
12 positive on him handling the gun. And it was at that
13 point that he changed his story from being in the car to
14 being up to grabbing the gun while Tony was firing the
15 last shot.

16 Q. Are you finished?

17 A. Yes.

18 Q. Okay. And this story you told him about AA
19 testing on his hand, that was a lie?

20 A. That was a lie.

21 Q. Okay. And you heard me ask your brother some
22 questions this morning about the usefulness of lies in
23 the police work?

24 A. Yes.

25 Q. And do you agree with your brother that lies and

1 the ability to lie are one of the skills and talents
2 needed by a good policeman?

3 A. Don't necessarily agree with that. But on
4 occasion during interviews, I will more than stretch the
5 truth.

6 Q. Sure. And you more than stretched the truth when
7 you spoke to Weston Howe this particular day, didn't
8 you?

9 A. Yes, I did.

10 Q. And you were doing that in hopes he would believe
11 you and you could persuade him certain things were truth
12 even though they were not?

13 A. I missed you on that one.

14 Q. You're telling us you wanted him to believe there
15 was some sort of AA test done on his hand when in fact
16 that was not the case?

17 A. No. We done an AA test on his hand. We just
18 didn't have the results of the swabbing at the time of
19 this interview.

20 Q. You lied to him about the results of that
21 testing?

22 A. At that time what I told him was a lie, yes, sir.

23 Q. You wanted him to believe your lie?

24 A. Absolutely.

25 Q. And this is when he beared his sole and just told

1 you all these details about this other homicide?

2 MR. SLAVENS: Objection to that, your
3 Honor.

4 THE COURT: As to the form, sustained.

5 BY MR. ARNTZ:

6 Q. Well, this is what caused him to change his story
7 when you persuaded him with a lie?

8 MR. SLAVENS: Objection to that, your
9 Honor.

10 THE COURT: It's the same general
11 basis, Mr. Arntz. Sustained as to form.

12 BY MR. ARNTZ:

13 Q. Well, in any event, there never came a time you
14 say that Weston would stop talking to you and refuse to
15 speak to you any further?

16 A. No, sir.

17 Q. And so far as you could tell, he was willing to
18 talk to you about anything?

19 A. He seemed willing to, yes, sir.

20 Q. In fact, he appeared to be willing to write out a
21 statement for you, had you asked him to do that?

22 A. I didn't ask him to, but I don't know if he would
23 have or not.

24 Q. Do you remember testifying under oath here last
25 year and being asked whether it was your opinion that he

1 would have willingly given you a written statement if
2 you asked him to do so?

3 A. Looking back, I believe he would have.

4 Q. And you have this blank tablet there in front of
5 you, and you know that you have a tape recorder and a
6 blank cassette there in the Dayton Police Department,
7 did it ever occur to you to ask this man who had
8 confessed to committing one or more homicides to write
9 that out in his own handwriting?

10 A. No. I was in fact in the process of trying or of
11 obtaining a video, just as the ones we've seen here in
12 court, of him. And I did obtain a video confession --

13 Q. Go ahead.

14 A. No. That answers the question.

15 Q. So the answer to my question is that it never
16 occurred to you to ask him to write any of this out in
17 your own handwriting?

18 A. No.

19 Q. I take it, it also never occurred to you to
20 record on a taped cassette the interview that yourself
21 and Detective Spells had with him at that time?

22 A. I attempted to record, make a video recording of
23 that.

24 Q. Speaking of a tape recorder, now, we agreed you
25 had a tape recorder there available to you?

1 A. I didn't have it available to me right there. I
2 mean, the question was, do we have them? Yes, we have
3 them. I didn't have it with me there in the room with
4 him at that time.

5 Q. But the tape recorder is fairly nearby, isn't it?
6 It's in the same building of the Dayton Police
7 Department?

8 A. No closer than the video camera.

9 Q. Well, my only question to you is, did it occur to
10 you that you might tape record the interview that you
11 were conducting with him and Detective Spells in the
12 interview room?

13 A. No.

14 Q. Okay. And other than your testimony here today,
15 we don't have any documentation, written recordation, or
16 tape recording of any of these comments that you say
17 Howe made to you?

18 A. That's correct.

19 Q. What we have are your words telling us that is
20 so?

21 A. That is true.

22 Q. And of course you have become aware of the
23 physical evidence that's been collected in this case?

24 A. Yes, sir.

25 Q. And the various kind of testing that have been

1 done?

2 A. Yes, sir.

3 Q. And you're familiar with whether or not there is
4 any physical evidence that Weston Howe was ever out at
5 Monument and Findlay in Tony Elofskey's car on the
6 morning of June 22d?

7 MR. SLAVENS: Objection, your Honor.

8 THE COURT: Overruled.

9 Do you understand the
10 question?

11 A. I think I understand the question.

12 And, yes, I feel there is physical evidence of
13 it.

14 BY MR. ARNTZ:

15 Q. And you ordered that certain physical evidence be
16 collected and tested as part of your investigation here,
17 didn't you?

18 A. Yes.

19 Q. You ordered, for instance, some tape lifts, try
20 to remove some gun powder or gunshot residue from the
21 interior of Tony Elofskey's car?

22 A. That was ordered but not by me.

23 Q. And someone ordered that some kind of comparison
24 be made between the shoes of Weston Howe and footprint
25 impressions that, that were found out there at the

1 levee, Monument and Findlay area?

2 A. Yes.

3 Q. And you know that the physical evidence placing
4 Weston Howe at Monument and Findlay is virtually
5 nonexistent, don't you?

6 A. The bullet, the shell casing that we found in
7 Elofskey's car. We have the bullets out of Mark
8 McDonald that matched the bullets out of the body of
9 Dick Blazer. We have two other co-defendants telling us
10 that he was the shooter on both. I think that's
11 physical evidence. And then with his statement, I think
12 that's physical evidence.

13 Q. Well, setting aside what the co-defendants are
14 saying here, you don't have, for instance, any
15 fingerprints from Weston Howe at the scene at Monument
16 and Findlay, do you?

17 A. No.

18 Q. Don't have any footprints?

19 A. No.

20 Q. Don't have any matching hair samples?

21 A. No.

22 Q. Don't have any fibers from his clothing there at
23 the scene at Monument and Findlay?

24 A. No.

25 Q. Don't have any of Weston Howe's blood there at

1 the scene, do you?

2 A. No.

3 Q. And solving cases is your job or your profession,
4 isn't it?

5 A. Yes, sir.

6 Q. And better for you if you get a conviction in the
7 case that you're working on, isn't it?

8 A. It pays no different.

9 Q. The pay is no different, but it certainly looks
10 better, doesn't it?

11 A. I feel good when I can come to the truth of
12 something after a trial to have people agree with me and
13 it's a conviction, I feel better about that.

14 Q. And in a statement or so-called confession from a
15 suspect would certainly make your job easier in a case
16 where there is little or no physical evidence connecting
17 him to the offense, wouldn't it?

18 MR. SLAVENS: Objection to that, also,
19 your Honor.

20 THE COURT: Overruled.

21 You can answer.

22 A. Yes.

23 BY MR. ARNTZ:

24 Q. The less physical evidence you have, the more you
25 have to rely on the word of mouth of other persons,

1 isn't that true?

2 A. Generally, yes.

3 Q. And you relied to some extent on the things that
4 Walter Polson and Tony Elofskey were telling you than
5 trying to solve these homicides, weren't you?

6 A. Well, at the time I got the confession from Howe,
7 we didn't have Elofskey, we only had Mr. Polson.

8 Q. Well, let's talk about Polson. You used some of
9 the things Polson said to you in your conversation with
10 Howe, didn't you?

11 A. Again, I hadn't spoken to Polson.

12 Q. Well, what you did was you talked to your brother
13 Wade Lawson and then you went back and talked to Howe,
14 didn't you?

15 A. Yes.

16 Q. And it was because of what your brother said to
17 you about what Polson had said to him that you went back
18 and confronted Howe?

19 A. That's correct.

20 Q. All right. So the answer is that you did use
21 some things that Polson said in speaking to Howe?

22 A. That is correct.

23 Q. All right. You relied in part on what Polson was
24 telling you in order to interview Howe further?

25 A. That is correct.

1 Q. All right. Now, taking you back to your
2 interviews with Tony Elopskey, what number of times have
3 you talked to Tony Elopskey prior to today?

4 A. I talked to Tony Elopskey on the morning of the
5 23rd when I was booking him. I talked to him on the
6 28th of June, 29th of June, the 30th of June. I talked
7 to him on July the 23rd. And I was present on Friday or
8 Saturday with the prosecutor in a pretrial situation a
9 couple of weeks ago. And those are the times that I met
10 with Tony Elopskey.

11 Q. All right. That would be a total of five or six
12 roughly?

13 A. Six, I think, but I'm not sure.

14 Q. Let me take you backwards, if I can, that
15 Saturday that you talked to Tony Elopskey with the
16 prosecutors. Would that have been Saturday three days
17 ago or Saturday ten days ago?

18 A. It would have been, have been ten days ago.

19 Q. Just before this trial started?

20 A. Yes.

21 Q. What was the purpose of you all meeting with Tony
22 just before the trial started?

23 A. The prosecutor had not met with, with Tony and it
24 was just a pretrial interview.

25 Q. Well, during the pretrial interview, was Tony

1 taken through his stories again?

2 A. He was asked what happened, yes.

3 Q. And, in fact, you all went through all the
4 stories that he would tell when he came in here to
5 testify, didn't you?

6 MR. SLAVENS: Objection to that, your
7 Honor.

8 THE COURT: Sustained as to form.

9 MR. ARNTZ: All right.

10 BY MR. ARNTZ:

11 Q. Well, back on June 23rd when you first met him,
12 you got to talking to him on a personal level and the
13 two of you became really friendly, isn't that what
14 happened?

15 A. That's correct.

16 Q. And you thought that he was taking a liking to
17 you on June 23rd, isn't that true?

18 A. He seemed to. That was at that time I was
19 booking him.

20 Q. That paid off because five days later he asked to
21 see you, isn't that right?

22 A. That's correct.

23 MR. SLAVENS: Objection to that, your
24 Honor.

25 MR. ARNTZ: Sorry?

1 THE COURT: Overruled.

2 A. I received a message through jail personal that
3 he wanted to see me.

4 BY MR. ARNTZ:

5 Q. And you went to see him on June 28th. This is
6 when he first talked to you about how he wanted you to
7 get him a deal from the prosecutor, isn't that true?

8 A. No, sir.

9 Q. And your testimony here today is that the first
10 time he ever raised the subject of a deal was on July
11 23rd?

12 A. No, sir. I believe it was the 30th. As I
13 recall, it was the 30th is the first time he raised the
14 issue.

15 Q. So your testimony is that on June 28th and June
16 29th he never raised the subject of a plea bargain or a
17 deal at all?

18 A. No. He was upset on the 28th, that's why he
19 wanted to see me. Didn't come up.

20 Q. Didn't come up.

21 And you took notes when you talked to Tony on the
22 28th and the 29th, then on July, June 30th and July
23 23rd, didn't you?

24 A. I made some notes.

25 Q. And on June 28th you made some notes that Tony on

1 that day was telling you that he believed Howe had shot
2 Blazer, am I right?

3 A. I don't recall that.

4 Q. Would your reports reflect what he told you on
5 June 28th?

6 A. My notes would.

7 Q. Do you have those available to you?

8 A. They are.

9 Q. Can you take a look at those now?

10 A. If you hand me that folder that's on top.

11 Q. Right here?

12 A. Yes, sir. Yes. Now your question, sir?

13 Q. My question was whether on June 28th when you
14 spoke to Tony Elofskey, he told you that he believed
15 Howe shot Blazer?

16 A. I don't see that in my notes. He recapped the
17 incidents for me on that day. I interviewed talked to
18 him. I advised him of his rights. And he told me about
19 what had happened. And he didn't make a reference to
20 believing that Howe had shot Blazer, no.

21 Q. And then when you saw him on June 30th, this is
22 when you say he was talking to you for the first time
23 about wanting to make a plea arrangement with you?

24 A. Yes. Uh-huh.

25 Q. And so at least since June 30th, Tony Elofskey

1 has been wanting to make a plea arrangement in his own
2 case, isn't that fair to say?

3 A. Yes.

4 Q. All right. That would be just seven days after
5 he was arrested?

6 A. Yes.

7 Q. And he spoke to you about wanting to make a plea
8 arrangement in his own case, didn't he?

9 A. On that occasion, and then on the 23rd.

10 Q. All right. And when you went to see him on June
11 30th, one of the reasons you went there was because you
12 wanted to go into the truthfulness of his prior
13 statements, isn't that true?

14 A. I don't recall ever doubting the truthfulness of
15 his statements. It was always the same.

16 Q. Well, you testified to the prosecutor here that
17 Tony's versions to you were always consistent with each
18 other, isn't that what you said?

19 A. Yes.

20 Q. All right. I will ask you whether you recall
21 these questions and answers from your testimony last
22 year under oath. Page 191.

23 Question: Before that, did Mr. Elofskey indicate
24 to you on the 30th as to why he contacted you or made
25 contact with you to come up to see him or how did that

1 develop?

2 Answer: He sort of wanted to talk to me about
3 these things. And then sort of recapped the truth
4 again. I was going into it with him about the
5 truthfulness of his prior statements.

6 Do you remember that testimony?

7 A. Uh-huh.

8 Q. All right. So the truth is that you were
9 inquiring into the truthfulness of his prior statements,
10 weren't you?

11 A. Right.

12 Q. And, likewise, on June 30th, there came a time in
13 your interview with Tony Elopskey that you insisted upon
14 him telling you the truth, didn't you?

15 A. I don't recall.

16 Q. You don't remember having to insist that Tony
17 tell you the truth on June 30th?

18 A. No. I don't recall that.

19 Q. 216. Do you recall these questions and answers
20 from your testimony under oath last year.

21 Question: Did he provide you any additional facts
22 other than had been previously provided to you during
23 the videotaped statement regarding the Blazer homicide
24 when you met with him on June 30th, 1992?

25 Answer: I don't recall anything being different

1 significantly or new to the facts, just recapped them
2 and insisting upon him telling the truth about the whole
3 incident.

4 A. Yes.

5 Q. All right. So the answer is that you did insist
6 with him that he tell the truth on that date?

7 MR. SLAVENS: Objection, your Honor.

8 It's argumentative.

9 THE COURT: Sustain the objection.

10 BY MR. ARNTZ:

11 Q. Well, was there some reason you were insisting
12 upon his telling the truth that day?

13 MR. SLAVENS: Objection, your Honor.

14 THE COURT: Overruled.

15 A. Well, obviously, I wanted him to be truthful with
16 me and feel that he told me the same, same information,
17 that it didn't change. I feel that was truthful.

18 BY MR. ARNTZ:

19 Q. Well, now, this would be the third time you had
20 an interview with Tony, June 28th, June 29th, and June
21 30th, so during your third interview with this man now
22 on June 30th, you have to insist that he tell you the
23 truth?

24 MR. SLAVENS: Objection to that, your
25 Honor. That's not the testimony.

1 THE COURT: Sustain the objection.

2 BY MR. ARNTZ:

3 Q. Were you involved in investigating the source of
4 the origin of the two handguns that were recovered in
5 your investigation?

6 A. Yes.

7 Q. And you in fact traced those handguns back to
8 certain owners, didn't you?

9 A. Yes.

10 Q. And neither one of those owners was Weston Howe?

11 A. That's correct.

12 Q. Now, the Monza automobile that Tony Elofskey
13 owned, you heard quite a bit about during this trial,
14 haven't you?

15 A. Yes.

16 Q. And you've heard descriptions about locations of
17 people and things that were supposedly done inside the
18 car?

19 A. Yes.

20 Q. And where would we find the car if we wanted to
21 show it to the jury today?

22 MR. SLAVENS: Objection, your Honor.

23 THE COURT: Overruled.

24 A. It's been destroyed.

25

1 BY MR. ARNTZ:

2 Q. It's been what?

3 A. Destroyed.

4 Q. The car has been destroyed?

5 A. Yes, sir.

6 Q. Who destroyed the car?

7 A. Coffey's Body Shop became the owners of the car
8 and it was shredded.

9 Q. When did Coffey's shred and destroy this car, if
10 you know?

11 A. I believe it was in December of '92.

12 Q. That would be two months ago?

13 A. Yes.

14 Q. And had the deal been worked out with Polson or
15 Elofskey at the time the car was shredded?

16 A. No.

17 Q. Are you sure about that?

18 A. Yes.

19 Q. Let me show you a couple of photographs that have
20 been previously been marked as State's Exhibit
21 numbers --

22 MR. SLAVENS: Can we approach and be
23 heard?

24 THE COURT: You may.

25 (WHEREUPON, a side-bar conference was held

1 off the record.)

2 THE COURT: You may continue, Mr.
3 Arntz.

4 MR. ARNTZ: Thank you.

5 BY MR. ARNTZ:

6 Q. Detective, I think I handed you two State's
7 Exhibits which have been previously marked as numbers 51
8 and 55, is that correct? I'm sorry, 15 and 55.

9 A. That's correct.

10 Q. All right. And 15 and 55 depict certain parts of
11 the exterior of Richard Blazer's home, is that correct?

12 A. Yes.

13 Q. And 55 here in my left hand depicts the exterior
14 of his house, particularly the front door of the area?

15 A. Yes.

16 Q. A closerup view of the front door area
17 particularly the sidewalk and the front door step, is
18 that right?

19 A. Yes.

20 Q. All right. And then as you look at those two
21 photographs, can you give me some idea what the
22 elevation or the height of that step is into Richard
23 Blazer's home from the sidewalk up to the top of that
24 step?

25 A. I would say about eight inches.

1 Q. Eight inches?

2 A. Uh-huh. Yes, sir.

3 MR. ARNTZ: Can I have just a moment?

4 THE COURT: You may.

5 MR. ARNTZ: Thank you.

6 That's all I have.

7 THE COURT: Redirect?

8

9 REDIRECT EXAMINATION

10 BY MR. SLAVENS:

11 Q. Concerning the automobile, are there photographs
12 here and were photographs taken of the Elofskey's
13 automobile?

14 A. Yes, sir.

15 Q. Were photographs taken of the Elofskey automobile
16 as it was parked at McOwen Street where it had come to a
17 rest after the chase?

18 A. Yes, sir.

19 Q. And were photographs taken of the automobile as
20 it sat over at Coffey's automobile shop?

21 A. Yes, sir.

22 Q. And you indicated that you ran, I want to say, a
23 check or trace of the two handguns that have been marked
24 and are as exhibits in this particular case the Bryco
25 and the Raven?

1 A. Yes, sir.

2 Q. And is it correct that the Raven came back as one
3 time being purchased by a Walter Polson?

4 A. Yes.

5 Q. And the other gun, the Bryco, do you recall, have
6 you had available today to tell us what the check of
7 that gun indicated?

8 A. Yes.

9 Q. Can you do so, please?

10 A. Hand me the green folder.

11 Yes, sir. That gun, our last record of that gun
12 was bought on 11/3 of '89 at Don's Pawn Shop by a person
13 known as Thomas Cockran.

14 Q. Now that's registered to the Bryco?

15 A. Yes, sir. Uh-huh.

16 Q. And when you say your last record, what do you
17 mean by that?

18 A. It's the last record that the Dayton Police
19 Department could ever establish on that gun. And then
20 we found that we had a record on a Thomas Cockran who
21 bought the gun. We have not been able -- the checks we
22 attempted to locate him were unsuccessful. So our last
23 record of that gun as we stand here today is Thomas
24 Cockran bought that gun in 1989.

25 Q. And so after Mr. Cockran, if he's the purchaser

1 of that gun, purchased that gun in 1989?

2 A. Yes, sir.

3 Q. What happened to Mr. Cockran or to the gun up
4 until June 22d, you don't know?

5 A. I have no idea.

6 Q. And if Mr. Cockran lost the gun or the gun was
7 stolen from Mr. Cockran and no report would be made,
8 would there be any record made of that?

9 A. No, sir.

10 MR. ARNTZ: We object to that
11 speculation.

12 THE COURT: Overruled.

13 BY MR. SLAVENS:

14 Q. If a gun is sold or traded on the street not
15 going through any shop or gun dealer, would there be a
16 record of that?

17 A. No, sir.

18 Q. Now, I believe you were asked questions in
19 regards to written documentation of your interview with
20 Weston Lee Howe. You made reference also of the fact
21 you had notes?

22 A. Yes, sir.

23 Q. Do you have those with you today?

24 A. Yes, sir.

25 Q. May I see them, please?

1 MR. ARNTZ: May we approach?

2 THE COURT: You may.

3 AT SIDE BAR

4 MR. ARNTZ: We are going to object to
5 the admission of any notes at this time or recitation
6 of the contents because they were not provided on the
7 discovery as demanded in numerous pleadings prior to
8 trial. They are summaries of our client's alleged
9 statements. They come under Rule 16. And they've
10 been specifically demanded numerous times.

11 MR. SLAVENS: These are the detective's
12 own notes which are, we submit, are basically his work
13 product. However, all of the notes are summarized in
14 written reports which were in fact given to defense
15 counsel in discovery. And the fact of the notes is,
16 in fact, brought up by his cross-examination of
17 written documentation and things of that nature. He's
18 opened the door for that.

19 THE COURT: Well, as I understand, the
20 question is, did you make notes, at least now by the
21 State, do you have the notes, questions along that
22 line. I'm going to permit that area of questioning.
23 Now if the notes actually get marked, I don't know
24 they will or won't, if they do, we will deal with the
25 admissibility of that once they're moved to be

1 admitted. But at this point in time, I think this is
2 proper redirect in view of the cross.

3 MR. ARNTZ: Well, as I say, we object
4 to the production of the notes, the marking of the
5 notes as an exhibit, any admission of the notes as an
6 exhibit. But we also object to the recitation of any
7 portions of the notes, because again, they are
8 summaries of statements allegedly made by our client
9 which fit directly under Rule 16 and have been
10 demanded numerous times prior to this trial. We don't
11 know what those notes look like, how they read, what
12 they say, what they don't say, and we've not be given
13 sufficient notice to be prepared to make them --

14 THE COURT: I understand that. But we
15 are not at that point, that is, to the actual
16 contents. That's what the defense is objecting to, of
17 the notes. And if the question is asked, obviously,
18 the Court would entertain an objection to the actual
19 contents of those notes. But the fact that he made
20 them, he's got three pages of notes, things like that,
21 I think the prosecutor is allowed to demonstrate to
22 the jury in view of the cross-examination.

23 MR. SLAVENS: Now also while we are here,
24 they were questions on direct, or cross-examination in
25 regards to videotaping or cassette taping. Now, this

1 defendant is on video, given the opportunity to do a
2 video, choose not to do so. I think it's fair game to
3 get that in front of the jury.

4 THE COURT: It depends how you do it.
5 I think you got to do it gently, very gently. It
6 depends on how the question is worded. Mr. Lawson has
7 been on the stand. You got to be careful, John.

8 MR. SLAVENS: He has opened the door.

9 THE COURT: Now, his questions related
10 to audio tapes.

11 MR. SLAVENS: He cannot select and choose
12 and use it on --

13 THE COURT: I understand that. The
14 problem is going to be is that he exercised his right
15 to an attorney. Now I think -- and if you want to
16 clarify this, you can. I thought that he's already
17 testified he offered him the opportunity to do a
18 video. And that Howe said, no. I thought he
19 testified to that on cross.

20 MR. ARNTZ: He has.

21 MR. SLAVENS: Then I can at least clarify
22 that up.

23 THE COURT: Yes. Stay away from the
24 lawyer aspect of it. That's the only place I'm on the
25 line. I'm not drawing onto the subject matter.

1 MR. SLAVENS: Okay.

2 MR. ARNTZ: Thank you.

3 BEFORE THE JURY

4 MR. SLAVENS: Let the record reflect the
5 witness has handed me seven pages, yellow.

6 BY MR. SLAVENS:

7 Q. And for the record, sir, are these your notes
8 made by you during the times of your two interviews with
9 Weston Lee Howe, Junior?

10 A. Yes, sir.

11 MR. ARNTZ: Same objections.

12 THE COURT: Overruled.

13 BY MR. SLAVENS:

14 Q. You were asked whether or not you or the Dayton
15 Police Department had recording, tape recording system,
16 or a recording device when you were asked questions by
17 Mr. Arntz.

18 A. Yes, sir.

19 Q. Did you, while you were conducting the, while you
20 were there with Mr. Weston Lee Howe have access to a
21 video recording camera?

22 A. Yes.

23 Q. And was Mr. Howe offered the opportunity to talk
24 to you on the video and, if so, did he decline?

25 A. He was offered. He did decline.

1 MR. SLAVENS: Thank you. That's all I
2 have.

3 THE COURT: Recross examination?

4 MR. ARNTZ: No thank you.

5 THE COURT: You may step down.

6 Thank you very much.

7 THE WITNESS: Thank you, your Honor.

8 * * * *

9 MR. SLAVENS: May we approach one more
10 moment? Not about this witness.

11 THE COURT: All right.

12 (WHEREUPON, a side-bar conference was held
13 off the record.)

14 THE COURT: Ladies and gentlemen of the
15 jury, we'll go ahead and take our afternoon break at
16 this point in time. We are going to try to keep this
17 a little short. The next witness is a professional
18 type witness. When I say that, he's a doctor. All
19 right. And apparently he's got another commitment
20 sometime later in the afternoon. So let's try to keep
21 this break down to about a 12 minute break. I don't
22 know where that puts us because you know me, in 10
23 minutes versus 12 minutes versus 15. In any event, we
24 do have the next witness and we'll get to him as soon
25 as the break is over.

1 Remember the usual
2 instructions from the Court not to discuss the case
3 among yourselves or with anybody else. Don't form any
4 opinions, you have not heard all the testimony. And
5 we'll see you back in approximately 12 minutes.

6 (WHEREUPON, a recess was taken.)
7

8 IN OPEN COURT - OUT OF THE PRESENCE OF THE JURY

9 THE COURT: All right. Let the record
10 reflect we are out of the presence of the jury.

11 We've already stated into
12 the record the Court's rulings as it relates to the
13 coroner's slides. I believe, Mr. Monta, you wanted to
14 be specific and identify a slide.

15 MR. MONTA: Right. Just for continuity
16 of the testimony, Judge, we would like to object to
17 the slide by number for the record now so we don't
18 have to do it --

19 THE COURT: You may do so.

20 MR. MONTA: If we might have that.

21 MR. SLAVENS: 80-A is the one.

22 MR. MONTA: 80-A is the exhibit. We
23 would object to showing.

24 THE COURT: All right. The Court has
25 previously ruled that motion or objection would be

1 overruled. This is 80 and, 80 and 81.

2 MR. MONTA: So the Court is clear, the
3 McDonald slides would be number 80-A through 80-I.

4 THE COURT: Then Blazer slides are 81-A
5 through E.

6 MR. SLAVENS: That is correct.

7 THE COURT: All right.

8 You may bring in the jury.

9 BEFORE THE JURY

10 3:08 p.m.

11 THE COURT: You may call your next
12 witness, Mr. Slavens.

13 MR. SLAVENS: Call Dr. David M. Smith.

14
15 DAVID M. SMITH, having been first duly
16 sworn according to law, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SLAVENS:

20 Q. For the record, sir, will you tell us your name,
21 please?

22 A. David M. Smith.

23 Q. And what is your profession or occupation?

24 A. I'm a medical doctor, deputy coroner and forensic
25 pathologist with the Montgomery County Coroner's Office.